THE DECALOGUE JOURNAL

A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS

Volume 10 MARCH-APRIL, 1960 Number 3

On Vandalism and Bigotry

We cannot lightly dismiss the sneak attacks on Jewish institutions in the United States merely as the work of vandals and hooligans whose taste for violence has been excited by the incidents in Germany.

The Jewish community of the United States is not so insecure as to react anxiously to every sporadic outburst of bigotry. Nor should each painted swastika be viewed as equally serious. But we are profoundly concerned that pools of latent anti-Semitism are so widespread and so near the surface that they need but little to boil over into vandalism and violence.

The epidemic of hate that has swept across the country is a challenge not to the Jewish community alone but to the spiritual values on which the American heritage and civilization itself are based. It is time that the world begins to understand that while the Jews are the traditional symbol of this hate campaign they are not the target. The real targets are Christianity and democracy. To meet the challenge of hate, we call on churches of all denominations—both through their national spokesman and through their local ministers—to denounce religious hatred of every brand and to promote that sense of spiritual fellowship vital to a peaceful community. We call on our schools to embark on a program which will instill respect for private religious conscience, for the dignity of the individual and for the fact of group differences, and we must make certain that our textbooks, our curriculum and our teaching faculties are oriented in this direction.

Finally, we call on local, state and Federal governments to translate the spiritual and ethical values of our democratic heritage into effective legislation that will put an end to discrimination in jobs, in housing, in education and in public accommodations—discrimination not only against Jews but, to a far greater extent in most cases, against Negroes, Puerto Ricans, Mexicans and other minority groups.

No problem of exhortation to tolerance or education in brotherhood can be successful if the routine practices of the community contradict the guarantees of equality embodied not only in our Constitution but in our national ideals.

JOACHIM PRINZ
President, American Jewish Congress

THE DECALOGUE JOURNAL

Published Quarterly by

THE DECALOGUE SOCIETY OF LAWYERS

180 W. Washington St. Chicago 2, Illinois

Telephone ANdover 3-6493

Volume 10 March-April, 1960 Number 3

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A LETTER FROM MR. KLUTZNICK

The Decalogue Society of Lawyers

Dear Friends:

It gives me particular pleasure, as a member of The Decalogue Society, to acknowledge the gift of $1,000 toward the Decalogue Society Fellowship Fund for the Faculty of Law at the Hebrew University in Jerusalem.

On behalf of my colleagues and myself, I want once more to express our deepest thanks and appreciation for all that The Decalogue Society of Lawyers has been doing to further the growth and progress of the Faculty of Law of the Hebrew University, which in turn helps to assure the future of Israel and its people.

Sincerely yours,
Philip M. Klutznick, President

DECALOGUE ELECTION AND INSTALLATION OF OFFICERS

Our Society's annual election and installation of officers will be held the evening of June 8th at a dinner, at the Chicago Bar Association quarters, 29 So. La Salle Street. The program will include the presentation to Meyer C. Balin, member of our Board of Managers, the Society's inter-organization award for 1959.

JUDGE FELDMAN RECEIVES HIGHEST VOTE

Member Judge Hyman Feldman received an unprecedentedly high vote from the Chicago Bar Association which recommended his reslatement for another term in the Municipal court. Judge Feldman's term expires this year.

The vote was based on 2140 questionnaires asking members to rate judges on integrity, legal ability, judicial temperament, and diligence.

ADER WRITES ON JUDGE JOHN P. BARNES

Member of our Board of Managers, Zeamore A. Ader's address on March 31, 1958 presenting the Tau Epsilon Rho Law Fraternity Public Service Award to the late Judge John P. Barnes, chief Judge of the U. S. District court for the Northern District of Illinois, has been published in *The Chicago Bar Record* of The Chicago Bar Association, Volume 41, No. 3. In his article Ader discusses at some length Judge Barnes' contributions to law and justice.

NINETEEN FIFTY-NINE DECALOGUE MERIT AWARD

Enthusiastic approval of The Decalogue Society of Lawyers selection of Philip M. Klutznick as the recipient of its 1959 Award of Merit honor marked our annual affair on February 20th at the Palmer House. A capacity audience attended the event. Hundreds of Chicago's prominent citizens, lawyers, judges, men outstanding in their respective calling and their families were in the large assembly.

President Meyer Weinberg presided. First vice-president, L. Louis Karton was chairman of the arrangements committee. Member of our Board of Managers, Judge Saul A. Epton made the presentation address to our guest of honor. Rabbi Morris A. Gutstein of Temple Shaare Tikvah uttered the invocation. Member Theodore P. Fields sang the national anthem.

Past president David F. Silverzweig presented a Citation of Merit to Benjamin Weintroub, editor of The Decalogue Journal upon Weintroub's completion of a decade of service as editor of The Journal.

Following are President Meyer Weinberg's message of welcome, Judge Saul A. Epton's presentation address, Mr. Philip M. Klutznick's response, and Mr. Silverzweig's remarks on the editor of our Journal.

Welcome: —PRESIDENT WEINBERG

Welcome! The Decalogue Society of Lawyers tonight celebrates its twenty-fifth merit award event. Our society is the third largest bar association in the State of Illinois and consists of fifteen hundred lawyers and judges of Jewish faith. The Decalogue Society is dedicated to the doctrine of service to the legal profession and to the community. Its participation in Jewish matters has always been substantial and its horizon of interests is as broad as are human needs. It is, therefore, fitting that our organization of lawyers should recognize and acclaim persons of like dedication to the public good and welfare.

In the course of our history we have honored on like occasions judges, lawyers, clergymen, statesmen, scientists, and editors. We have thus added luster to their names and honor to ourselves. We have more than once distinguished for recognition men from our bar association.

Tonight we are happy that our "silver" recipient is one of our own members whose record of public service equals that of the brilliant array of his predecessors. Other participants in tonight's program will furnish you with a bill of particulars showing why and how Mr. Klutznick has earned this distinction. May I add that I am thrilled that it was during my administration that a man of his stature and achievements is honored this evening.

Presentation: —JUDGE SAUL A. EPTON

Our choice this year is a man who has devoted his lifetime to making America, as well as Israel, a better place in which to live. He has dedicated his life to the benefit of mankind, and his activities have focused our nation's eyes upon him. His well-trained mind and enlightened and forthright manner of expression have been so recognized that his convictions are often reverently quoted. His unerring logic has gained for him the respect and admiration of people throughout the world.

Philip Klutznick is a great man, one of peerless courage. His astute and objective appraisal of every situation leaves no room for deception or insincerity. He has the strength of his convictions, and in expressing them he is bluntly realistic, whether in his office, or in conference with President Eisenhower, Chancellor Adenauer, or Premier Ben Gurion. As an example of his candidly impersonal attitude, I quote excerpts from his speech before more than five thousand Israelis, when, in his capacity as President of B'nai B'rith, he delivered a most stirring address.

> . . . The majority of Jews will continue to live in lands other than Israel. This may be a hard fact for extravagant nationalism to accept, but to blink at it is utter folly.

The Jewish community outside of Israel today falls into three categories: First, Those who live in underdeveloped nations with deplorably low standards of living. They will continue to seek their way to Israel and it is axiomatic that all of us assist their efforts to migrate. Second, those who live under forms of rule and government oppressive to their sense of Jewishness and abusive to their human dignity. They may escape, or be permitted to migrate to other lands, and we must help them by whatever means we can develop. We must keep burning the flame, no matter how small, that is still in the souls of men and women of our faith who want to remain so in the face of their adversity. Third, those who live where Jewish life is free to flourish, countries such as my native America, Great Britain, Australia. Here we have a group representing about four times the number of Jews now living in Israel and whose relationship with Israel is a key challenge to Jewish life.

The latter must not be taken for granted by the people or spokesmen of Israel, any more than we dare impose our strictures upon Israel. These Jews must not be characterized in the Israeli mind as available targets for immigration campaigns—and their reluctance to emigrate derided. Assuredly, Israel has a sovereign right to encourage immigration. The "law of return" is one of the great moral justifications for her statehood; but it is an unwise and unproductive venture for Israel to anticipate any disintegration of Jewish life in free lands. This is not to say that some will not come, or that special skills and unique talents should not be induced to come. However, the importuning calls for wholesale migration—if these are contemplated—are not only foredoomed to failure, they are detrimental to Israel by their negative attitude toward Jewish life elsewhere in the world.

The American Jewish community is the largest Jewish community both in population and resources. Modestly, on its behalf, I say that American Jewry, with all of its faults, exists as the backbone of Jewish hope outside of Israel. No graver crisis could afflict Israel than the disintegration of Jewish life in America. Therefore, any clamoring for large numbers of American Jews to abandon their status is a self-defeating effort unworthy of the hour. The wise leadership of Israel does recognize this—let it be so with all of Israel . . .

It would be a simple matter to deliver such a forthright speech in the United States, but to have the courage to deliver a message of such import to the very heart of Israel bespeaks the mettle of our guest of honor. No one of us doubts the courage and devotion of Israelis to their cause and to their land, and no one doubts the devotion of Philip Klutznick to his country while he fights the cause of Israel and of all Jewry throughout the world. This requires a man of exceptional and outstanding qualities. This year's recipient meets these qualifications and that is why we honor him.

Mr. Klutznick, the Decalogue Society salutes you, and presents to you its most precious award, the Decalogue Society of Lawyers Award of Merit for the Year 1959.

PHILIP M. KLUTZNICK: —Response

. . . Three weeks ago last Thursday I sat in the comfortable office of Chancellor Conrad Adenauer in Bonn, Germany. We were alone save for his interpreter. One of the leading German dailys in reporting the session called it a "four eye" discussion. This was their way of referring to an off-the-record conference about which nothing else has been said. Nor will I now violate the Chancellor's confidence. I refer to it only as one qualification among others for what is my evaluation of a grievous and difficult affair.

In the same day in Bonn, I spent a long time with the top officials of the United States Embassy to get their understanding of the situation. Again on that day, I talked at length with a high German official who was even then working on the material for a "white book" published this week on the incidents that were sparked by the smear of the Cologne Synagogue. A few hours later I returned to Cologne to board a train for Amsterdam. As if drawn by a magnet, I revisited the imposing religious structure, dedicated only last fall by the Chancellor, and which has now become collaterally famous because of acts of infamy. To complete my personal round of contacts, I talked at length with the leaders of the West German Jewish community and with a B'nai B'rith team which had spent time in West Germany, looking into the situation in detail, as well as other Jewish leaders meeting in Amsterdam who have had and expressed certain views on the whole matter. So much has been said about these incidents that I approach my own first extensive public observations with trepidation and a measure of caution.

This subject has an extraordinary interest from a Jewish point of view. It may well have a deep meaning for the international law of tomorrow. The Decalogue Society is concerned with Jewish matters and the law and what it means. This is the forum in which to discuss a subject about which some facts have now been gathered and about which some thinking should be expressed to place the whole picture in what I consider to be today's proper frame. History may rewrite the conclusions of today, (nearly three months after Cologne), but let it at least record that some early thought was given to the whole morass of filthy, inhuman and indescribable indiscretions committed primarily against Jews and Jewish institutions.

Between December 24th, 1959 and the end of January, 1960, the best figures that I have been able to secure indicate that there were 414 incidents in the United States in some thirty eight States and Washington, D.C. In about 180 of such cases, there were anti-Semitic markings on churches, public and private schools, colleges, libraries, streets, highways, etc. The remainder were on essentially Jewish institutions of one kind or another. During this same period of time, anti-Semitic vandalism outside of the United States as reported in the American Press accounted for some 616 cases, two-thirds of which were in West Germany, the remainder in thirty-one other countries including six incidents in Israel itself. The total was something over one thousand. The last list that I saw did not include any countries from the Far East, nor the Soviet Union or its satellites, save East Germany. Otherwise, the world was pretty well represented. One of the most distressing aspects of the arrests made in the United States and elsewhere is the number of teenagers and youngsters involved in these incidents.

In the immediate wake of these incidents a number of shocking reactions took place. The most frequent at the outset was a type of "I-told-you-so" attitude about West Germany itself. Some said that this was the work of Neo-Nazis who are seeking to come back to power. Others called for great demonstrations against Germany. Some saw in all this an international conspiracy led by former Nazis and still others laid blame at the door of the Communists giving them credit with the power to organize such a demonstration on a worldwide basis. Even as we sit here, the search goes on for evidence of a conspiracy either of professional anti-Semites, Neo-Nazis or Communists. I am certain that every effort has been and will continue to be made to find such a cause. In a way, I hope that this will be found. Such a genuine discovery would make our problem and our solution much simpler than what I fear the real facts disclose. If only there was a cabal or a conspiracy which started this wave and had then nursed it, it would be easier to develop measures of strength to isolate and eliminate the cause. The response of horror and disgust of a good part of the non-Jewish world suggests that if there was such a conspiracy and the perpetrators could be unveiled, the overwhelming strength of the good elements would assert itself effectively. The evidence does not yet, nor do I believe that it will ever support such a conclusion.

Of course, there are professional anti-Semites in nearly all Western countries and some of the East. They are generally well known and in most places completely abhorred by the masses of people. Neo-nazis and communists doubtless found common cause without pre-arrangement to practice these deeds of violence and hate—but this coincidence does not give us the solace that we face a clearly defined challenge from an organized conspiracy.

Much has been made of the fact that there are some former Nazis occupying high government positions in West Germany. It is not my purpose to defend the Adenauer government for keeping such persons in high office. Nor do I lightly dispose of the fact that there are former Nazis in office in West Germany. But, could it have been otherwise? The real danger is in treating these facts as a major cause of the events. A substantial part of the people of West Germany were Nazis or Nazi sympathizers in its most normal sense during the Hitler period. There were millions who were involved in the affairs of Hitler. Many

of these people are still there. De-nazification itself did not affect every German who may have had an affection for the Nuremberg laws or the anti-Semitic programs of the Hitler government. The big task is to recognize these truths about which very little can be done overnight.

Today, anti-Semitism in West Germany is a kind of anti-Semitism without Jews. The small scattered Jewish community of some 30,000 souls is neither important numerically or politically in a nation of 53,000,000. Quite to the contrary, its real importance to the Adenauer government is as a symbol that there are Jews back in Germany and that they are treated well. The government in power recognized the huge adverse reaction that could set in if these relatively few Jews were harmed. There are instances where one might appropriately question whether the authorities have not leaned backward in providing structures and facilities for Jewish use in an effort to cleanse the public mind of any thought that Germany is anti-Semitic today. The leaders of the West German Jewish community know and the leaders of the West German government know that the limited number of Jews in West Germany is not a vital fact except as a symbol and in, and of itself, was not the root cause for these incidents. I am also certain that the unfolding evidence will demonstrate that irrespective of the presence of former Nazis in the Adenauer Government this was not one of the substantial facts contributing to these events, as regrettable as it may be.

The most inescapable conclusion is that West Germany perhaps lost most in this round of events. It lost status in the eyes of many people in the free world. The attack of the Communists world against the Adenauer government of West Germany was given added weight. It did something else—it tended to weaken the Western Alliance. This is an exceedingly dangerous consequence. The press of Great Britain especially complained heavily against West Germany. The British Adenauer opponents did everything they could to create and multiply doubts about the justification of trusting West Germany with arms.

To some there is only one question; what about the Jews and the Jewish institutions that were smeared and even bombed? There is some consolation in the fact that a good part of the world stood up against these outrages. It was enheartening to see non-Jews in governments, including the West German Government, express their horror at what had taken place. But, like anti-Semitic incidents of the past, though they may hurt our people, the real important damage was done to West Germany and to its relationship in the free world.

As far as I know, as of this moment in the whole wave no lives were lost. In view of this, I am constrained to make what may be a most unpopular statement. When one recognizes the strong undercurrent of unrest that was disclosed in these smearing days, and when one accepts the existence of conditions that would permit such events to take place, I am grateful that they took place now while there may still be a chance to do something about it. What happened should provide the warning that a drifting free world has sorely needed.

Let us not be so free with the pointing of fingers. It may be that we all have a share of the blame for this shame. The early blush of the crusade to protect all humanity against the scourge of anti-Semitism and hatred began losing its fervor and courage ten years ago. The spirit of righteousness that actually consumed a Lehmke, the author and almost lonely advocate of the genocide convention, has abated and ebbed in many places. Tired evangelists of human rights have absented themselves from the ramparts for too long. Maybe weary bones and aching heads will be invigorated by this recrudescence of one of humanity's ancient crimes against itself. How many times must we learn the lesson that the hated may suffer but it is the haters who ultimately destroy themselves. These days we are caught deep in worry about the destruction of the world by the fearsome implements of the space age—we could as violently and even more despicably destroy the world we know by failure to control the forces of human hate.

Within the fabric of these convictions, let me give you my views about these sobering events.

1. Let us not look for easy answers to these problems. If we believe that a parade, no matter how well intentioned, or a series of protest meetings, or a great deal of public fault-finding with West Germany will solve this problem, then we are definitely on the wrong track and headed for an inevitable doom. It is cheap and easy to trot out old cliches which didn't work and old methods which failed and try them all over again on the theory that what we are dealing with is simple, organized anti-Semitism. The facts and the world around us belie such an approach or a conclusion.

2. *Germany* is a symbol where human rights are involved. Undoubtedly the public mind will not be satisfied unless it is treated separately in any consideration of what has happened. This can be done without militating against the realization that the task is far more comprehensive and the warning more meaningful than the problems of West Germany alone. I am convinced that the present leaders of West Germany recognize now more than for some time the full scope of their task. Actually, the greatest danger immediately after Cologne was that laws would be enacted and steps taken that would not conform to the ultimate long-term good of either Germany or the solution of the problem that confronts the world. It is always in order for a government, no matter how well intentioned it is, to examine those who are in its service and re-examine their qualifications in the light of changing events. The appeals that former Nazis be withdrawn from places of influence are understandable, and must be treated by the West German Government in the light of the world's concern. The worries about the growth of a Neo-Nazi movement are just as real with the West German Government as they are anywhere else from my own personal observation. The solutions are not quite as simple as these appear to be. The hard core circumstance which is frequently overlooked is that West Germany is a new democracy. It is not only a new democracy, but it has had the fortuitous or unfortuitous fortune of enjoying an extraordinary period of prosperity. People have been too busy to worry about national programs and democratic growth. While people vote in Germany, the most qualified leadership of that country recognizes that what Germany has are the parliamentary forms of democracy that have not yet developed into a way of life. Under the surface there is always present an arrant nationalism which has not yet yielded to a German democracy because a thoroughly imbedded German democracy has not yet emerged from the struggles of the post-war period. The education system, the training for citizenship and citizen group participation are far short of the demands of a live and real democracy. When we complain about German educational systems, let us not ignore the role of the occupying powers in setting them up. As a certain well informed person recently said "In short, German life must strive to be democratic twenty-four hours a day. It will not be a British, French or American brand of democracy, it must be a German democracy. It must be conceived, planned, and carried out by Germans. No one can come in and impose an ideology from without." Such a development will take many, many

years, and it must be recognized as a work that will require understanding, dedication and strivings, not only from German leadership that is so disposed, but from the world that would have Germany succeed in this effort. To achieve these ends in Germany, there must be a world environment in which such attainments are encouraged by the atmosphere itself.

3. Since the agreement on the Universal Declaration of Human Rights in 1948, the world environment for human rights and the creation of instruments to enforce and understand them has steadily but surely deteriorated. Increasingly, leaders of the governments of the world ignore or pay little heed to international programs concerned with human rights. There is a kind of mockery made of the necessity of even considering these programs. In this atmosphere there is little wonder that there should take place in Germany and elsewhere, what we have just witnessed. Walter Lipmann recently called attention to the great danger to our own way of life by our over-concern with private prosperity at the expense of national welfare. This kind of seeking for personal satisfactions and creature comfort has overwhelmed the national will to lead in the struggle for human rights and dignity in the United States and elsewhere. Since 1953, when for domestic political considerations, our government announced that it would not consider human rights covenants as being something that could be enacted and legally enforced as against this government, we lost a position of leadership in the struggle for human rights. I am fully aware of the problems, domestically, of securing Senate consent to covenants if they are ever agreed upon, but I have become acutely aware of an overriding consideration in the world in which we live. If the United States is not prepared to lead no matter what the hazards may be in the field of human rights and human dignity, then the Western World has little cause to complain when confronted by incidents like the Cologne Synagogue smearing. There can be no great human gains in any isolated area of the world without some price being paid somewhere. If the leader defaults, we help create an atmosphere which unconsciously condones and contributes to the delinquencies that dotted the universe these tragic weeks.

4. It is disconcerting and strange that at the very moment that the world made so much of the thousand isolated incidents involving anti-Semitic implications that little was said or done about the official statements of the Soviet Union on the eve of Cologne beamed at the Arab countries and enunciating a doctrine of official anti-Semitism. This too may be attributable to a switch in signals since the events of World War II. We are crusaders for a new concept in the world when we announced a new doctrine of responsibility on the part of governments and their leaders for crimes committed against humanity. The war criminal trials were to mark a new epoch in international legal protection of people against the hatred of their rulers. There was a full flush in our eagerness in the early days of the United Nations to have an International Court created on a permanent basis to stand as a stalwart sentinel against the repetition of the Hitler holocaust and to warn those who might by playing with his ideas for political or national aggrandizement.

For some years now we have participated in shelving this idea. We have turned our back on it perhaps out of fear that it might be misused and might become a trap. The world over these reasons are not understood. The knight in shining armor who rode out to do battle against the vicious doctrine of national immunity when nations and their leaders destroyed peoples because they were of a certain faith or of a certain color turned his back on that struggle. It, in effect, served notice that the old days could return. In this sense also we have contributed to the creation of a condition of negativism, of lack of respect for the enlargement of the vistas of human dignity and human rights. In doing this, in a passive sense we are parties to the crimes that were committed in the smearing of synagogues and of public institutions. Of course, there is risk in the creation of a program or an international court, but it should now become evident that there is greater risk in not doing so.

5. Finally, we have a tendency to fall heir to a very common error. I am in the presence of many lawyers. They will forgive me if I urge once again the obvious. Law is the product of a society and its experience and not the creator of either. Sometimes in a burst of enthusiasm we enact a law only to discover that the people are not ready for it, no matter how much it purports to reflect good and inveigh against evil. Even as in the case of Germany, we create democracies in the world by the wave of a hand and the promulgation of a constitution and laws. Since World War II and especially now the number of peoples given freedom who committed themselves to at least a legal democracy or paper democracy is legion. Someone recently estimated that as many as fifty or sixty such entities will come out of the continent of Africa alone in the next years, with ten or fifteen of them to be created in the near future.

We who preach and try to practice democracy must have no illusions about what is happening. Some so-called democracies are such in name only. Their people neither understand nor practice the elements of democratic life. Just as we enacted a Volstead act and drank on very blithely, just so do some places provide the shell of a democracy and ignore it in practice. I have already pointed to the fact that Germany under Adenauer has yet to become a thoroughly practicing democracy. While no one knows this better than the leaders of Germany, there are many places in the world where the same is true and the leaders and we ourselves ignore this fact. It is from such places that tyranny may well spring. It is in all such places that education and leadership for a democratic way of life of an indigenous character must be provided and encouraged. This cannot be done by a Western world preoccupied with economic and military facts alone. What we have witnessed since December 24th is in its broadest sense a direct challenge to what we have called democracy, not only in Germany but wherever it exists and where it has been born in recent years. To consider it otherwise is to make a fatal error both in time and space.

Not so long ago, a certain gentleman of the press, whom I count as a friend, suggested that I made light of this situation by referring to the fact that it was many things that may have contributed to the events since December 24th and included among them that it may have been juveniles and frustrated and mentally maladjusted people, engaged in imitative behavior. If he had any notion in isolating this item that I considered the problems that erupted since late December as minor ones, he was sadly mistaken. What I feared and what I have since confirmed for myself is that the problem was so complex and so difficult that it cannot be handled by simple slogans and by resolutions of protest. What I feared and what I believe is that the problem is not one of West Germany, as symbolic as it is in all areas of anti-Semitic behavior, but one that involves a world that has grown soft in its treatment of human and civil rights and in its reaching for new and more lasting solutions to the age-old problem of human hatred. In saying

this, I do not discount the importance of my own people who, feeling hurt, must react in a type of therapy which a frightened and a hurt people are entitled to use. I shudder at the thought that what this kind of thing is may be taken as the panacea or the cure for the ills that confront us. I do sympathize with the pro-democratic forces in West Germany and with the leaders of a Western world whose task has been complicated immeasurably by the events of recent weeks, and who need the strength and encouragement of right-thinking people everywhere rather than their criticism alone. What we need to do is to quit thinking of Adenauer's Germany as if it were Hitler's Germany. No one has said that better than a doughty old warrior, Ben Gurion himself, when he uttered this unpopular thesis in a place where it was certain to be as unpopular as it could be in any place in the world, namely, Israel. I sat with him a few weeks ago when we reviewed these incidents in calm and quiet. When I expressed some of my views and fears about what had happened, I applauded his courage and the sturdiness of the position he had taken as being the right one in today's world. I shall never forget when he seemed to pull back the shades of memory and told me of a favorite niece he once knew many years ago in Eastern Europe. For the first time, I recalled seeing tears in his eyes as he quietly mentioned her loss and the loss of so many others because of the Hitler scourge. And, then he said; "But we can't live in the past, we must look at the world today, and build for the future." That's the voice and the heart of a courageous man who has had the strength to face the unpopular issues of this hour and to warn against a great error in analysis which might lead us to even greater errors in solution.

We can't live in the past. As poignant as it is and as important as it may be never to forget it as a base for today and tomorrow. We have made many mistakes, not only in the period of Hitlerism, but in recent years as well. If we are to take this warning of the terrible disturbances that lie in human hearts beneath the surface of what may appear to be equanimity and tranquility, then we must man the ramparts once again, and fight for new measures that will help insure human dignity and human rights everywhere in the world. We must recover an error in turning our back on legally conceived international covenants of human rights and we must once again lead to create the atmosphere in which governments and their leaders may know that the world looks down ignominiously upon any attempt to reawaken or to recover the viciousness of a Hitler and his ilk. To do less, is to fall short of this challenging and difficult hour. To do less, is to choose any easy road to ultimate doom, rather than the hard road to greater achievement and to greater human happiness.

Presentation of Citation of Merit to BENJAMIN WEINTROUB

By DAVID F. SILVERZWEIG

Ours is a country of diverse cultures fused together into one common bond which we choose to call the American way of life. In strengthening each strand, we enrich the whole fabric.

Elihu Root when he was President of the American Bar Association aptly said: "In modern times, it is only by the power of association that men of any calling exercise their due influence in the community."

This is part of the philosophy of our existence — to strengthen and enrich the strand of which we are part to make for a better America, and to do so through the "power of association" in this voluntary fellowship which we call the Decalogue Society of Lawyers.

Our Society was founded some twenty-five years ago. We evolved slowly; activities were started, institutions developed. What has become one of the proudest adornments of our Society is our publication, *The Journal.*

The Journal, or *The Bulletin* as it was called in humbler days, had its lowly beginnings—I was its first editor. This handicap, however, was in due time overcome. That it has risen as an organ of influence and eminence is attributable to the genius and devotion of one man—its present editor.

Ten years ago Benjamin Weintroub assumed the editorship of *The Journal.* Today you will find copies of *The Journal* in law libraries throughout the land and beyond—at Harvard and at Yale, at the Association of the Bar of the City of New York and at the University of California, at Notre Dame here in the Middle West and at the Hebrew University at Jerusalem in the Middle East. Within its pages appear not alone Society news but legal articles of unquestioned scholarship, book reviews of literary distinction, and legal gems culled from many sources.

What has Ben done as editor for the Society and for *The Journal?* As I see it, chiefly four things: First, he has encouraged many of our members to contribute articles in areas of the law where they have a special competence. Second, he has established high standards, himself setting the example with his own contributions. If an article had to be rewritten four times to make it acceptable, it was rewritten four times. Third, he has made *The Journal* a force for *progress* in the law and legal administration. And, finally, he has created a publication of *quality* which has standing in legal councils.

The Journal represents the character and philosophy of our Society, but it reflects also the mind and spirit and enthusiasm of its editor.

The story of Ben Weintroub is perhaps in the best tradition the story of America. Coming from his native Odessa at the age of 16, his first job was shoveling coal for the Union Pacific railroad. In between this and other tasks, he pursued night courses and managed degrees in liberal arts and in law. Next to his charming wife, Ruth, and two lovely daughters, Dolly and Laura, journalism and literature have been and still are his reigning loves.

For the past 18 years he has been the editor and publisher of *The Chicago Jewish Forum*, a national quarterly magazine. The *Forum* is listed in *Writer's Market*, a trade publication, among the select few, less than 25 out of 3500 publications, in the quality field.

Wealth is to him the wisdom of books, the inspiration of good deeds, the richness of the spirit. Every cause which has righteousness at its core, can command his ear, his heart, his mind, his pen. Ben's philosophy of life may be summed up in the words of the ancient Hebrew prophet who would "give all thoughts of gold for one golden thought."

His interests as a citizen are wide. The City Club of Chicago, the Hebrew Immigrant Aid Society, and the American Jewish Historical Society, to name but a few, are among the organizations which he has enriched with his vitality and wisdom. He has served the Decalogue Society with distinction as its president.

We present this Citation to you, Ben, with the gratitude and esteem of your colleagues in the Society. We present this Citation to mark a decade of unexcelled service as Editor of *The Journal*, a quarter century of inspired service to the Society, and a *lifetime* of devoted service to the one cause which unites us all, the service of all mankind.

Praise Decalogue Selection of Klutznick

Below are excerpts from letters that have reached the president of our Society up to the time this issue went to press. More comments, it is expected, will be published in a later issue.

. . . Philip Klutznick is one of the outstanding American Jews of our time and his great contributions to the development of better understanding of the American Jews has won for him a secure and lasting place in the roll call of great Jewish leaders. Both as president of the Order of B'nai B'rith and a member of the United Nations he has a profound understanding of the political and moral values in their application to world issues. He has been one of the foremost influences in the progress of Israel's accomplishments in economy and industry and his advice and counsel have aided that country in its efforts for political and economic stability.

Jacob M. Arvey

* * *

. . . Mr. Philip M. Klutznick by his preeminent achievements in the field of civil freedom and other humanitarian causes has richly earned this recognition and has proved himself to be one of the great leaders in American life today.

Grenville Beardsley
Attorney General, State of Illinois

* * *

. . . He is one of the outstanding men of our times both in his ability as a businessman and in his character as a fine gentleman.

William E. Cahill, President
Catholic Lawyers Guild of Chicago

* * *

. . . I have known Phil Klutznick and his work for over a score of years. He has contributed much to us and "the free world." For this we join with The Decalogue Society in recognition and appreciation of this distinguished American.

Justice Tom C. Clark
United States Supreme Court

* * *

. . . His genius in fusing great ideas into men seeking wisdom and understanding and a better life, has helped make the decade now concluded a happier one in America, Israel, and throughout the lands of Democracy.

Samuel T. Cohen, President
Council of Traditional Synagogues

* * *

. . . Mr. Klutznick exemplifies the finest in community leadership. His dedication to humanitarian causes everywhere is in the rich tradition of our people.

Morris R. DeWoskin, President Chicago Chapter
American Friends of the Hebrew University

* * *

. . . Phil has been a tower of strength to me. . . . He, indeed, is a worthy choice to receive the award of merit as the silver anniversary recipient.

Everett M. Dirksen
United States Senator from Illinois

. . . Tell Mr. Klutznick that his deserved recognition gives me real happiness.

Paul H. Douglas
United States Senator from Illinois

* * *

. . . I have known Mr. Klutznick for many years and believe him to be a champion of world Jewry, guardian of its most vital interests, a dedicated fellow American, and one who is eminently deserving of the honor that your Society is bestowing upon him.

Harry J. Dunn, President
Chicago Hebrew Immigrant Aid Society

* * *

. . . Recognizing as we do Mr. Klutznick's stature as an outstanding civic leader and devoted communal worker, we feel that this award is extremely timely and proper.

Miriam Freund
National President, Hadassah

* * *

. . . His achievements in social and civic endeavors should move others to noble action in great work. You have chosen to honor a man of indomitable purpose and untiring industry.

Peter Paul Gaddy, President
Lithuanian-American Lawyers' Association

* * *

. . . His many endeavors and devoted service in the field of helping his fellow Jews as well as his deep understanding of our problems have made him the outstanding leader he is today.

David Ben-Gurion
Prime Minister, Israel

* * *

. . . Please express my feelings of deep esteem for this outstanding leader of American Jewry who has made and continues to make immense contributions to the welfare of the people of Israel.

Avraham Harman
Israel Ambassador to the United States

* * *

. . . Congratulations to Philip M. Klutznick for his outstanding service to the community and country in the field of human relations and his consistent devotion to humanitarian principles in business and civic activities.

Jeanne C. Hurley, President
Women's Bar Association of Illinois

* * *

. . . He is indeed a fine symbol of an outstanding, public spirited citizen, and he well deserves to join the list of venerable people who have preceded him in receiving your honored award.

Mrs. Charles Hymes, National President
National Council of Jewish Women

. . . Behind nearly every great cause for Chicago, you will find Philip Klutznick's dynamic personal force.

Percy L. Julian

* * *

. . . All of his life he has been a builder of human values. He is one who has a deep feeling not only for humanity, but for the humanities, as well.

Label A. Katz, President
International Order, B'nai B'rith

* * *

. . . I do not believe that you could have made a more fitting choice. Mr. Klutznick has served with great devotion in countless civic, religious, educational and philanthropic causes. He has given of his time and strength without stint, and his sympathies have known no boundaries of creed, color, or national origin.

Herbert H. Lehman

* * *

. . . I am sure that in the years ahead, Mr. Klutznick will serve the Jewish people with the same spirit of dedication that has marked his work in the past. May this award inspire him to go "from strength to strength."

Jules L. Levinstein, President
Chicago Council, United Synagogue of America

* * *

. . . I can think of few persons more deserving of this distinction than Mr. Klutznick, whose numerous and selfless public services both in Jewish and non-Jewish spheres have made an invaluable contribution to the betterment of mankind.

Benjamin Mazar, President
The Hebrew University of Jerusalem

* * *

. . . In awarding this honor to Philip Klutznick, you recognize his place in the world scene and his contributions to the unity of "the children of the Covenant," the primacy of Jewish education, and the urgency of supporting the State of Israel.

Rabbi Moses Mescheloff
Congregation I.I.N.S. of West Rogers Park

* * *

. . . Philip M. Klutznick has distinguished himself both as a dedicated leader and as a dynamic worker for the advancement of Jewish welfare and security throughout the world; for equality among men regardless of religion, race, or creed; and for the betterment of the conditions under which humankind lives.

Isaiah M. Minkoff, Executive Director
National Community Relations Advisory Council

* * *

. . . Mr. Klutznick's contribution to civic betterment as well as his outstanding services as International President of B'nai B'rith make him a worthy choice for this recognition.

Willis D. Nance, President
The Chicago Bar Association

* * *

. . . Mr. Klutznick's outstanding record as a civic leader, former international leader of B'nai B'rith, and his latest honor as national chairman of the United Jewish Appeal richly merits this tribute and I am happy to add my congratulations to the many he will receive from his host of friends.

Richard Nixon
Vice President, United States.

. . . Every worthwhile ideal of the American and Jewish experience—the extension and enrichment of the democratic system; freedom for the Jewish people in a Jewish homeland; the ending of prejudice and discrimination; the expansion of Jewish cultural activity—all these causes have equally claimed his great energies and talents.

Joachim Prinz, President
American Jewish Congress

* * *

. . . Mr. Klutznick is an outstanding civic leader who has made significant contributions to civic betterment and has rendered distinguished service to humanity.

Mitchell S. Rieger, President
Chicago Chapter, The Federal Bar Association

* * *

. . . Mr. Klutznick has applied his extraordinary gifts to the service of his people and to the cause of human progress everywhere. The scope and depth of his achievements are reflected by your distinguished Society's tribute to him.

Daniel G. Ross
Chairman, Board of Directors
American Friends of the Hebrew University

* * *

. . . It is a special pleasure to congratulate you upon honoring my valued friend Philip Klutznick who well deserves the award.

Judge Simon E. Sobeloff

* * *

. . . His appointment as delegate to the United Nations by President Eisenhower gave additional democratic strength, integrity and wisdom to the work of our public servants from the United States who are trying to build a world in which peace is possible.

Edward J. Sparling, President
Roosevelt University

* * *

. . . Philip M. Klutznick is an outstanding Jewish communal leader of marked ability as an orator and a constructive thinker. He has made many contributions to the causes of Jewish communities at home and abroad.

Jacob Siegel, Chairman
Jewish Labor Committee

* * *

. . . He is an outstanding citizen, lawyer, and devoted public servant and your selection of him as the recipient of your Award of Merit honors the Decalogue Society as well as Phil Klutznick.

Adlai E. Stevenson

* * *

. . . His dynamic leadership in the general community . . . his chosen field of business, and as head of the world's oldest and largest service organization . . . has without doubt created for him an unassailable position as one of the world's most honored and able Jewish spokesman of this generation.

Sam J. Stone, President
District Grand Lodge No. 6, B'nai B'rith

* * *

. . . I can think of no one on the American Jewish scene, who has more richly earned this distinction. Mr. Klutznick's services and exemplary dedication in behalf of the Jewish people and the State of Israel, have won for him a unique place in the annals of American Jewish leadership.

Peretz Tauman, President
Labor Zionist Organization of Chicago

* * *

. . . I most certainly wish to congratulate Mr. Klutznick upon being selected for this Award of Merit which he deserves for his outstanding contribution for the betterment of humanity.

Harry S. Truman

Decalogue Society Members, Candidates for Public Office April 12th Primary

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Representative in General Assembly—6th District
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Delegate to National Nominating Convention
2nd District
BARNET HODES

Delegate to National Nominating Convention
12th District
PHILIP A. SHAPIRO

Alternate Delegate to National Nominating Convention—8th District
IRVING LANDESMAN

Alternate Delegate to National Nominating Convention—12th District
SAMUEL C. HORWITZ and
SEYMOUR SIMON

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FOR JUDGE OF THE MUNICIPAL COURT
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Delegate to National Nominating Convention
12th District
ALLEN J. FREEMAN

REPUBLICAN WARD COMMITTEEMEN
Ward 23—SAMUEL A. KANTER
Ward 48—ALLEN A. FREEMAN

FOR JUDGE OF THE MUNICIPAL COURT
BENJAMIN BROMBERG

SAUL EPTON, JUDGE

Member of our Board of Managers Saul Epton was appointed last December by Governor William G. Stratton to a judgeship in the Municipal Court of Chicago. Epton will fill the vacancy caused by the election of Judge J. Erwin Hasten to the Circuit Court.

The new Judge's professional and communal background is long and rich in affiliations with causes of public interest. He is active in several Bar associations in Chicago and he has served for several years as a member of Illinois Civil Service Commission. For many years he was a Trustee of the Morgan Park Military Academy. In 1955 he received a merit citation from Governor Stratton for being the only candidate to receive unanimous endorsements of his candidacy from all civic organizations as well as every Chicago newspaper.

Congratulations Saul, and many more years of constructive and fruitful service ahead.

SAMUEL BERKE ON OIL

Member Samuel Berke, Master in Chancery Superior Court, addressed the Covenant Club Round Table Forum on February 10th, on "Adventure in Oil." Berke is a frequent lecturer and a writer on various phases of this subject.

Trade Marks—Their Selection and Protection

By ESTHER O. KEGAN

Member of our Board of Managers Esther O. Kegan is a registered patent attorney and a member of the firm, Kegan Bellamy and Kegan.

The mental images aroused by such words as KODAK, CADILLAC, COCA COLA, REVLON, FRIGIDAIRE, and KLEENEX are the result of advertising expenditures of many millions of dollars. These words—valuable, intangible manifestations of good will—are known as trade marks. A trade mark is not the name of a product but indicates its source or origin—that is, the manufacturer or distributor of a product. The growing standardization of goods and the increasing complexity of the raw materials make reasonable selection of a particular product extremely difficult. Thus advertisers no longer extol the intrinsic virtues of merchandise. Instead they try to create a personality image keyed to a trade mark to which the consumer will have a brand loyalty, when the actual content of the product may be similar to most of the competing brands.[1] Thus selection of a trade mark can often be of greater importance than the "know how" of production or distribution. On the whole, care in the selection of a trade mark gives it greater protection and minimizes attacks of infringement by others.

Some trade mark counsel believe that the selection of a trade mark belongs exclusively to the realm of advertising personnel,[2] but my experience shows that this policy promotes trade mark litigation at undue expense to the client. The trade mark attorney can assist advertising counsel so that the mutual client can concentrate on the manufacture and sale of his product rather than divert time and money to trade mark litigation. Although trade mark matters are generally handled by legal specialists known as patent and trade mark lawyers, every lawyer can be of great assistance to his client in the selection and protection of his client's marks. For this reason I would like to present not the procedural or regulatory aspects of obtaining registrations of marks, but rather an understanding of the basic legal and economic philosophy upon which many of the trade mark protections are based.

Trade marks are protected by the common law of our country, but most trade mark litigation is governed by the applicable statutory law. The current federal statutory law governing trade marks is the Trade Mark Act of 1946, popularly known as the Lanham Act.[3] In addition, each of the fifty states has enacted its own trade mark law.[4] Essentially the trade mark laws set forth the criteria for registering a trade mark with the appropriate governmental agency and the remedies available for infringement of said registrations. But a trade mark registration confers no substantive rights.[5] The right of ownership in a mark cannot be acquired by mere invention or selection[6] or even by advertising the mark.[7] Substantive rights to a trade mark accrue only upon use—that is, when a mark is directly applied to tangible goods or to their containers actually placed upon the public market.[8]

The symbol used to identify services by means of advertising said services is known as a service mark, and is protected by common law, federal statutory law, and by the trade mark laws of some, but not all, of the states. Although our discussion will center primarily on trade marks, these remarks are also applicable to service marks.

ESTHER O. KEGAN

Almost[9] all words, numerals, and symbols used to identify the source or origin of goods are registrable under federal and most state laws, except the following four principal categories.[10]

1. Marks which are primarily descriptive or deceptively misdescriptive.
2. Marks which are primarily geographically descriptive or deceptively misdescriptive.
3. Marks which are primarily a surname.
4. Marks which so resemble a previously registered mark as to be likely, when applied to the applicant's goods, to cause confusion or mistake or to deceive purchasers.

Extensive advertising and sale of a product bearing a mark within the first three prohibitions—namely, descriptiveness, geographical nature, or a surname—may convert said unregistrable mark into a registrable one. Such advertising changes a mental image in the mind of the consumer so that the word no longer has its original meaning, but conjures up in the purchaser's mind a new and distinctive picture. For instance, the word "Philadelphia" no longer refers to a city when it is seen immediately before the phrase "cream cheese."[11] "Philadelphia" as applied to the well-known cream cheese has achieved a special or "secondary meaning," so that it is now distinctive and not merely a geographical designation.

Similarly, the term "Snap-On" when applied in 1920 to tools and tool-drawer units was unquestionably descriptive. But in 1956, when our Illinois courts heard, among other facts, testimony that sales of "Snap-On" tools amounted to over $143,000,000 throughout the country and that the "Snap-On" trade mark was objectively valued at over $2,800,000, District Judge Knoch ruled that plaintiff's trade mark had acquired secondary meaning and defendant's use of "Snap-On" for drawer units was therefore an infringement.[12] When affirming this decision, Judge Finnegan of the Court of Appeals for the 7th Circuit held as follows:[13]

> The name of the plaintiff manufacturer has become the sign of a physical thing, e.g., the product. The relation between the sign and the object has been categorized by advertising and other investments of time, effort, and capital.

That conclusion would not likely have been reached during the first five years of use of the trade mark "Snap-On," but only after thirty years' use. Moreover, the injunction against use of the term "Snap-On" as a trade mark still does not prevent use of the words "snap on" in the textual matter in a grammatically complete statement of the tools' function or action.

Mass advertising can thus convert descriptive, geographical, or surname marks into true trade marks. However, any manufacturer adopting a trade mark at the present time would be ill advised to select any mark which could not be adequately protected immediately. To achieve distinctiveness of such weak marks would require an extensive advertising budget and years of sales campaigns.

The best marks, therefore, from a legal point of view are the coined or fanciful marks. Good examples of such marks are KODAK, DACRON, and REVLON. Even suggestive marks such as DUZ, IVORY, and TIDE are legally acceptable. These marks can be protected from infringement after their first bona fide commercial use in commerce.

Assuming that the mark is not descriptive, geographical, or a surname, the principal hazard in selecting a mark is to find one which does not so resemble a previously registered mark as to cause confusion or mistake or to deceive purchasers.

To assist trade mark counsel in evaluating a proposed mark, a search of prior registrations in the United States Patent Office is essential. Firms in Washington and elsewhere specialize in the searching of trade marks from the records of the United States Patent Office, both as to registered marks and as to pending applications. The Patent Office divides marks into fifty-two classes of goods and eight classes of services, but such classification is only for the benefit of the Patent Office. These searchers merely abstract the records; they generally do not evaluate the results.

Registrability of a work or symbol mark can never be determined by evaluating the mark alone; in all instances the use of the mark on the particular goods or services is important. Rarely, however, is the exact word found for the same or similar goods. Therefore, discretion and judgment are necessary to determine whether mark A may be registered for goods X in view of the existing registrations and applications.

Patent Office and judicial determinations concerning whether confusion could arise from the contemporaneous use of two marks are based on the facts of each case. Thus the usual halo of legal precedent does not prevail in trade mark cases. Where evidence of actual confusion is found, there is no problem—infringement is found. Most trade mark litigation, however, is preventive. The cases arise here out of attempts to prevent the registration of a mark through an opposition proceeding in the Patent Office or in suits for infringement in the federal courts on the theory that confusion or mistake or deception is *likely* to occur. This therefore is a subjective determination as to the possibility of some future event. The economic situation of the market place and the psychological impact of the mark on the consumer are of prime importance.

In the following cases it was held that confusion was *not* likely to occur:

> YARDLOADER for a vehicle mounted material loader, and YARDLIFT for power-operated fork trucks.[15]
> GM-80 for gelatinized wheat starch for industrial use, and GM for automotive products and parts thereof.[16]
> LUSTRAPON for concentrated shampoo, and LUSTRON for hair preparations.[17]
> DEWPACK for fresh frozen shrimp, and DEWKIST for canned and frozen fruits and vegetables.[18]
> JULIETTE for ladies' electric razors, and GILLETTE for razors, blades, and electric shavers.[19]

In the following cases it was held that confusion was likely to occur:

> DUTCH BOY with an illustration of a Dutch boy for flower bulbs, and DUTCH BOY with a similar illustration for paints and paint products.[20]
> SWANKAPS for children's caps, and SWANK and SWANKSHIRTS for men's belts, garters, and outer shirts.[21]
> PERCMASTER for use on glass percolators and COFFEEMASTER for the same product.[22]
> DRAMAMINE and BONAMINE, both used on a motion sickness remedy.[23]

There is a rationale behind these seemingly inconsistent decisions. The underlying premise concerns the facts based on the impact of the respective marks on the commercial scene at the particular time. Would purchasers familiar with mark A upon seeing mark B believe that they emanate from the same source? For instance, flower bulbs and paint would not appear to be related goods. But in the DUTCH BOY case cited above,[24] the testimony revealed that flower bulbs and paint are often sold in the same retail outlets to the same average purchasers. Moreover, bulbs and flower seeds had been given as premiums with the sale of paints. Hence the Commissioner of Patents ruled that confusion in the trade was likely by the contemporaneous use of the mark DUTCH BOY on paints and flower bulbs.

Another inquiry is—do the products of the two marks involved move in the same channels of trade? A legalistic comparison of the mark NATCO used on soft drinks and ATCO used on extracts and syrups for soft drinks would lead to the conclusion that the marks are confusingly similar. However, the Commissioner of Patents held that confusion is not likely between NATCO for soft drinks and ATCO used on flavoring extracts and syrups primarily because NATCO products are sold exclusively in the retail stores of the National Tea Company, and ATCO is used in the making of soft drinks where such extracts and syrups are sold to bottlers who bottle and sell them to retail outlets, but the public are not sold ATCO soft drinks.[25]

Another test used to determine whether a new mark A used on goods X is registrable in view of a previously registered mark B for goods Y would be the answer to this question: Do the two marks concerned invoke different commercial impressions? This factor was controlling when the Commissioner of Patents ruled that ROMEO could be registered for vermouth even though ROMA was used and registered for wines. The Commissioner stated:

> Opposer's mark "Roma" is "Rome" in the Italian language, and if it suggests to purchasers anything other than opposer's wine, it most likely suggests "Rome." Purchasers are apt to associate applicant's mark (ROMEO) with Juliet as the result of the association of the two in the name of the Shakespearean play.[26]

Greater care in the selection of a mark makes protection of a mark more complete. But even under the best circumstances, subsequently adopted marks may affect the value and usefulness of an earlier mark. The usual recourse is by the filing of an infringement suit to enjoin further use of the infringing mark and for probable damages. If the mark is federally registered, suit may be filed in the federal court without regard to questions of diversity of citizenship or jurisdictional amount.[27] If the mark sued on had always been displayed with the statutory notice of federal registration, namely "®" or "Reg. U.S. Pat. Off.," then the plaintiff may seek damages from the date of infringement since the public is presumed to have notice of all federal registrations.[28]

The hazards of selecting a new mark are demonstrated by the case of *W. E. Kantenberg Co.* v. *Ekco Products Co.*[29]

The U.S. Court of Customs and Patent Appeals upheld the refusal to register the mark WEKCO for use on mops upon objection of the owner of the mark EKCO used on kitchen utensils. The court emphasized that

> where a party has spent upwards of 5 million dollars in advertising, has built up a substantial reputation with respect to the mark used in connection with his products and the mark is as strong and distinctive as is appellees (EKCO) then this court will not view lightly possible encroachment upon that party's good will by a newcomer in the field.[30]

Up to 1960 about 700,000 trade mark registrations have been issued by the United States Patent Office. Selection of a new mark is not easy in this highly competitive field. To select a mark which can be registered in the United States Patent Office and protected in the courts, counsel must take cognizance of the state of the Federal Register as well as the market place where the mark is to be used.

In conclusion, I would like to emphasize that for maximum protection of a mark there should be regular shipments of merchandise bearing the mark. If a mark is registered and regularly used on goods sold in commerce and made known to the public through advertising, then the courts will adequately protect the investment in that trade mark in appropriate infringement suits.

FOOTNOTES

1. See Packard, **The Hidden Persuaders.** David McKay Company Inc., New York, 1957, 47 ff., for a fuller discussion of this approach.
2. Seidel, **What the General Practitioner Should Know About Trade Marks and Copyrights.** The Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association, 1959, p. 30.
3. Act of July 5, 1946, 60 Stat. 427, Title 15, U.S.C.A., chap. 22, secs. 1051-1127.
4. Illinois is among the states whose trade mark law is patterned after the federal law: Act of July 11, 1955, Ill. Rev. Stat. (1959) ch. 140, secs. 8-22.
5. Stern Apparel Corp. v. Raingard, Inc., 87 F.Supp. 621 (D.C. N.Y. 1949).
6. Dickerson v. Wyandotte Chemicals Corp., 91 U.S.P.Q. 345 (C.P. 1951).
7. Arrow Importing Co., Inc. v. Dreisen, Meyer & Oronsky, 74 U.S.P.Q. 66 (1947).
8. Mendes v. New England Duplicating Co., 94 F.Supp. 558, 88 U.S.P.Q. 62 (D.C. Mass. 1950).
9. Most laws also prohibit the registration of the following words and symbols as trade marks: Immoral, deceptive or scandalous matter; matter which disparages or falsely suggests a connection with persons living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; the flag or coat of arms or other insignia of the United States or any state or municipality of any foreign nation; the name, portrait or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased president of the United States during the life of his widow, if any, except by the consent of the widow: See §2(a)(b) and (c) of the Trade Mark Act of 1946, 15 U.S.C.A. §1052(a)(b)(c).
10. Trade Mark Act of 1946, §2(d) and 2(e); 15 U.S.C.A. §1052(d)(e).
11. Phenix Cheese Co. v. Kirp et al, 176 App. Div. 735, 164 N.YS. 71 (1917).
12. Snap-On Tools Corporation v. Winkenweder and Ladd, Inc., 150 F.Supp. 796, 111 U.S.P.Q. 394 (D.C. Ill. 1956).
13. 250 F.(2d) 154, 158; 115 U.S.P.Q. 380, 383 (C.A. 7th, 1957).
14. Western Stove Co., Inc. v. George D. Roper Corporation, 82 F.Supp. 206, 213; 80 U.S.P.Q. 393 (D.C. Calif. 1949).
15. Clark Equipment Co. v. Otis Elevator Co., 121 U.S.P.Q. 147 (C.P. 1959).
16. General Motors Corporation v. General Mills, Inc., 121 U.S.P.Q. 190 (TM App.Bd. 1959).
17. Sales affiliates, Inc. v. Wella Corporation, 120 U.S.P.Q. 486 (C.P. 1959).
18. Kelley, Farquhar & Co. v. Jekyll Island Packing Company, Inc., 119 U.S.P.Q. 302 (TM App.Bd. 1958).
19. The Gillette Company v. Stern, 118 U.S.P.Q. 469 (C.P. 1958).
20. National Lead Company v. Michigan Bulb Company, 120 U.S.P.Q. 115 (C.P. 1959).
21. Swank, Inc. v. Betty Ann Hats, Inc., 119 U.S.P.Q. 334 (TM App. Bd. 1958).
22. Sunbeam Corporation v. Handcraft Novelty Co., 118 U.S.P.Q. 371 (C.P. 1958).
23. G. D. Searle & Co. v. Chas. Pfizer & Co., Inc., 265 F.(2d) 385, 121 U.S.P.Q. 74 (C.A. 7th, 1959).
24. National Lead Company v. Michigan Bulb Co., 120 U.S.P.Q. 115 (C.P. 1959).
25. Ex parte National Tea Company, 111 U.S.P.Q. 241 (1956).
26. Schenley Industries, Inc. v. Battistone, 112 U.S.P.Q. 485 (C.P. 1957); In re Webcor, Inc. 122 U.S.P.Q. 97 (1959).
27. 15 U.S.C.A. §1121.
28. 15 U.S.C.A. §1111.
29. 251 F.(2d) 628, 116 U.S.P.Q. 417 (C.C.P.A. 1958).
30. Op. cit., p. 632.

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Charles Goddard Levy	Marvin Juron Louis Swidler
Donald Lipman	M. Blowitz Norman Lettvin
Sherwin J. Malkin	Seymour Velk Oscar M. Nudelman
S. S. Muller	Joseph Rosenstein Meyer C. Balin
Bernard H. Ostrowsky	Meyer Weinberg Irving Panter
Seymour H. Persky	Benjamin Weintroub John M. Weiner
Jerome Richard	Favil David Berns Meyer Weinberg
Jack Ring	Marvin Juron Leonard M. Ring
William A. Romanoff	David Lefkovits Earle A. Malkin
Norbert N. Rosenthal	Marvin Juron Louis Swidler
Sidney J. Sexner	Marvin Juron Howard Minn
Martin A. Smith	Benjamin Weintroub Louis A. Smith
Morris S. Telechansky	L. Louis Karton Favil David Berns
Howard I. Wittenberg	Marvin Juron Louis Swidler

HONORS FOR H. BURTON SCHATZ

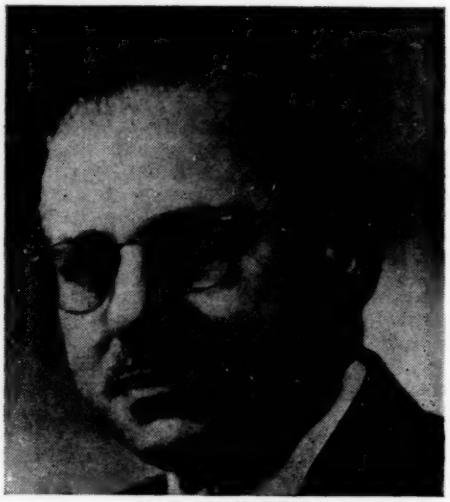
Member of our Board of Managers H. Burton Schatz was elected a vice-president of the Bureau on Jewish Employment Problems. The Bureau is the central agency in Chicago concerned primarily with the elimination of discriminatory employment practices against Jews and persons of other religions, nationalities, and races.

Schatz is president of Temple Beth El of Chicago and a past president of Chicago B'nai B'rith Council.

Summary of Recent Decisions in Illinois Probate Law

By NAT M. KAHN

Member of our Board of Managers Nat M. Kahn is a member of the Board of Governors of the Illinois State Bar Association from Cook County and a frequent writer and lecturer on probate law.



NAT M. KAHN

The following decisions of the Illinois courts of review during the past fiscal year are of special interest to the Bar:

Monohan v. *Monohan*, 14, Ill. 2d 449, 153 N.E. 2d (Suit to Enforce Oral Contract to Adopt). The Supreme Court of Illinois for the first time held that an oral contract to adopt may be proved by circumstantial evidence that is clear and convincing.

Conway v. *Conway*, 14 Ill. 2d 461, 153 N.E. 2d 11. (Will Contest). This emphasizes the value of an attestation clause. The will in that case was admitted to probate even though the attesting witnesses saw neither the testator's signature nor the contents of the will.

Department of Public Welfare v. *Ahern*, 14 Ill. 2d 575, 153 N.E. 2d 22, (Claim against Incompetent's Estate). The estate of an incompetent patient in a state hospital was held liable for her care during the period she was unable to pay for her care when she subsequently inherited sufficient property to pay these past charges even though she had not been billed for past care.

Quellmalz v. *First National Bank of Belleville*, 16 Ill. 2d 546, 158 N.E. 2d 591 (Will Contest). The Supreme Court held that an insane delusion does not exist unless the fallacy of the belief on which the delusion is based can be demonstrated.

Estate of Klappa v. *Johnson*, 18 Ill. App. 2d 501, 158 N.E. 2d 754 (1st Dist.) (Disallowance of Fees of Attorney for Executor). (Leave to appeal denied). The Appellate Court for the first district held that the Probate Court, in addition to having jurisdiction to allow attorney's fees, also has jurisdiction to disallow attorney's fees.

Allen v. *National Bank of Austin*, 19 Ill. App. 2d 149, 153 N.E. 2d 260 (1st Dist.) (Will Construction). The Appellate Court for the first district held that a bequest of a specific number of shares of corporate stock owned by a testator when he makes his will also includes additional shares of the stock acquired subsequently by the testator by stock splits unless a contrary intention appears in the will.

Estate of Yoon, 20 Ill. App. 2d 343, 156 N.E. 2d 217 (1st Dist.) (Objections to Final Account). The Appellate Court for the first district held that even though an attorney represents a dishonest administrator who is removed, he is entitled to compensation if the attorney acted honestly and in good faith without knowledge of the administrator's dishonesty.

Estate of Deskovic, 21 Ill. App. 2d 209, 157 N.E. 2d 769. (1st Dist.) (Recovery Citation). The Appellate Court for the first district held that in a joint bank account with right of survivorship, the survivor establishes a prima facie right to the funds upon production of the written agreement of the parties with the bank.

SUPREME COURT OF ILLINOIS DECISIONS

PUBLIC AID COMMISSION v. *STILLE*, 14 Ill. 2d 344, 153 N.E. 2d 59. (Citation for Recovery of Assets) The survivorship attribute of real estate owned by a husband and wife in joint tenancy does not follow the cash proceeds of a sale of the real estate made by them even where the proceeds are preserved intact and immediately and directly placed in a safety deposit box previously rented by them under a lease which provided for "joint tenancy with right of survivorship" as to the contents of the box. The joint tenancy ceased with the completion of the sale of the real estate. (In re Wilson 404 Ill. 207 and David vs Ridgely-Farmers Safe Deposit Co., 342 Ill. App. 96 followed).

MONOHAN v. *MONOHAN*, 14 Ill. 2d 449, 153 N.E. 2d 1. (Suit to Enforce Oral Contract to Adopt) An oral contract to adopt, as any other fact, may be proved by circumstantial evidence, but the evidence must be clear and convincing and the court will weigh the evidence scrupulously and with caution. The proof was overwhelming in this case that the decedents, husband and wife, had agreed to adopt the plaintiff. Upon the death of the last decedent, the plaintiff was found to be his sole heir as they both died intestate without ever having any children born to either

of them. Full performance by the plaintiff rendered the statute of frauds inapplicable.

CONWAY v. *CONWAY*, 14 Ill. 2d 461, 153 N.E. 2d 11. (Will Contest) Where a will has apparently been executed in due form, contained an attestation clause and the genuine signatures of the testator and the attesting witnesses, and is found in the testator's safety deposit box, every reasonable presumption will be indulged in favor of its due execution and attestation. This presumption of due execution and attestation will apply even though neither attesting witness actually saw the testator's signature because the document was folded or rolled up at the time each witness was requested by the testator to witness his signature on the document. The witnesses respectively attested the instrument on two consecutive days and not in the presence of each other. Although the first witness placed a date after his signature which was a day before the date appearing on the will, the presumption of validity of due execution of the will still continued.

It was a fair presumption that the date in the will was an erroneous one, and the presumption continued that the will had been actually signed by the testator when he asked the witness to attest it.

Under Illinois law, the attesting witnesses need not sign the will in the presence of each other, but they must sign it in the presence of the testator. This case illustrates the value of an attestation clause.

HEANEY v. *NAGEL*, 14 Ill. 2d 520, 153 N.E. 2d 75. (Assignment of Dower) Wife's inchoate right to take dower of a parcel of real estate owned by the husband and sold by him "subject to the inchoate dower interest" of the wife was not released by a subsequent property settlement agreement between the husband and wife made six years after the sale when they released each other of "any interest of any kind or nature in or to any property, real, personal or mixed, of the other property to this agreement, whether now owned by such party or hereafter acquired." The buyer of the real estate withheld $8,000.00 of the agreed purchase price because of the outstanding dower interest.

DEPT. OF PUBLIC WELFARE v. *AHERN*, 14 Ill. 2d 575, 153 N.E. 2d 22. (Claim against Incompetent's Estate) Estate of incompetent mental patient in a state hospital was liable for her past care during the period she was unable to pay for her care and she subsequently inherited sufficient property to pay these past charges even though she had not been billed for the past care.

McGHEE v. *FORRESTER*, 15 Ill. 2d 162, 154 N.E. 2d 230. (Suit to Quiet Title) A father executed a deed conveying real estate to his two sons with a reservation of a life estate by the father. Nineteen years after the deed was executed it was found among the papers of the deceased notary who acknowledged the deed by the grantor. Since it was no longer in the grantor's possession a presumption arose as to its delivery. The deed was then recorded by one of the sons, one of the grantees. The father, the grantor, was then still alive. The two sons, the grantees, denied any knowledge of the deed prior to the time it was discovered among the notary's effects. The two sons, the grantees, never mentioned the deed or its recording to their father, who died about fifteen months after the deed was discovered. About seven months after the deed was recorded the two sons, the grantees, conveyed the property to their sister and her husband subject to the father's life estate in consideration of their promise to support the father for the rest of his life and to share in his funeral expenses. He lived with the daughter and her husband and they supported him until his death.

The Supreme Court affirmed the Trial Court and held that the presumption of a valid delivery of the first deed continued and was not overcome because it was no longer in the father-grantor's possession. Once a deed has been executed and leaves the possession of the grantor, he has no further authority over it, and his consent is *not* required to authorize a grantee to record the deed unless there is an agreement to the contrary. It was also held that the grantor's, the father's, continued possession of the property was consistent with his retention of his reserved life estate and the presumption of delivery of the first deed.

ANDERSON v. *LYBECK*, 15 Ill. 2d 227, 154 N.E. 2d 259. (Suit to Establish Constructive Trust) A son who bore a fiduciary relationship to his father acquired title to the father's real estate on the son's oral promise to hold the property for the father. Unknown at the time to a sister of the brother and about a year after the father's death intestate, the son transferred the property to himself and his wife in joint tenancy. Meanwhile within a year after the father's death the son orally assured his sister, an heir of the father, "that her interest would be taken care of and that she would get her share." About four years after the father's death the son again told his sister, "not to worry about her share of the property, as she would have it in a few years." The son died about three years after making this last promise.

The Supreme Court reversed the Trial Court's decree that dismissed the suit on the erroneous holding that the daughter's action against the surviving wife under the joint tenancy to establish a constructive trust for the heirs of the father was barred by the five year statute of limitations. The Supreme Court held that the oral promises of the brother to his sister that she would get her share tolled the statute of limitations. The admissions of the son testified to by the plaintiff that he held the property for his father were admissible and were not barred by Sections 2 and 4 of the evidence act. The widow of the son was not defending the suit as the executor, administrator, heir, legatee or devisee of any deceased person. Moreover, the widow of the son was not a surviving partner, or joint contractor of her deceased husband. Therefore Section 4, of the evidence act barring the admissions of a deceased partner or joint contractor testified to by the adverse party did not apply.

Although constructive trusts are subject to the operation of the statute of limitations, and no repudiation is necessary to set the statute in operation, the assurances of the brother to the sister rendered the limitations statute inoperative.

MOORE v. *MOORE*, 15 Ill. 2d 239, 154 N.E. 256. (Suit to set Aside Fraudulent Conveyance) The Trial Court sustained the motion of the defendants to dismiss plaintiff's complaint, and the Supreme Court reversed the Trial Court's dismissal. The Supreme Court held that plaintiff's complaint that alleged the following facts was sufficient to state a cause of action. While the plaintiff was engaged to the father of the defendants, his son and two daughters, and about ten months prior to the marriage, the prospective husband, without the knowledge or consent of his prospective wife, transferred the title to his 141 acre farm to his son and two daughters and reserved a life estate in the farm to himself. The deed of conveyance was recorded about ten months before the marriage. During their courtship the prospective husband represented to his prospective wife that he owned the farm and could amply provide and care for her. The husband died in 1956.

During the marriage the wife loaned her savings of $1,600.00 to her husband and she supplemented their income by caring for elderly people and took in washing and ironing.

The Supreme Court held that the transfer that was described in the complaint was made "on the eve of the marriage" and in fraud on the marital rights of the wife. The Supreme Court held that the wife was not bound by constructive notice of the recording of the deed about twelve years before the husband's death and her action was not barred by laches. Persons that contemplate marriage trust and have confidence in each other so that they are not under a duty to search public records to determine the truth or falsity of representation as to ownership of real estate made by one to the other.

PETERS v. *CATT*, 15 Ill. 2d 255, 154 N.E. 2d 280. (Will Contest) At the close of plaintiff's case the Trial Court correctly directed a verdict for the proponents on the issue of testamentary capacity, but erroneously directed a verdict for the proponents on the issue of undue influence. Three lay witnesses were permitted, without objection, to testify that in their opinion the testator, who was over 80 years of age and in poor health, did not have the mental capacity to make a will. The only factual basis appearing in the record in support of their opinions was the alleged failure of the deceased, on a given day, to talk to two of them. Both of them had not seen him for a number of years and one of them had been merely a distant acquaintance. The record was otherwise barren of any evidence that the testator lacked testamentary capacity, except that of another witness that the deceased for some time prior to the making of the will seemed to have a poor memory and repeated himself in conversation. These facts were insufficient as a foundation for the opinions of the lay witnesses that the decedent lacked testamentary capacity. A fiduciary relationship existed between the testator and a devisee who received a substantial benefit from the will. The testator reposed trust and confidence in the devisee, and the preparation of the will was procured by that beneficiary who, in the absence of the decedent, requested an attorney to draw the will. These facts established prima facie the charge that the execution of the will was the result of undue influence exercised by that beneficiary, and the old age and disability of the testator was also a material circumstance on the issue of undue influence.

QUELLMALZ v. *FIRST NATIONAL BANK OF BELLEVILLE*, 16 Ill. 2d 546, 158 N.E. 2d 591. (Will Contest) Eccentricity does not constitute unsoundness of mind, nor do the peculiarities of old age, feebleness, or miserly habits, of themselves, show a lack of testamentary capacity. An insane delusion that will avoid a will must affect or enter into the execution of the will, and even where a testator has an insane delusion on certain subjects, still if he has mental capacity to know his property and the objects of his bounty and to make a disposition of his property according to a plan formed by him, the will cannot be set aside on the ground of mental incapacity, and an insane delusion does not exist unless the fallacy of such belief can be demonstrated.

IN RE: KATHREIN'S ESTATE, 16 Ill. 2d 621, 158 N.E. 2d 599. (Probate of a Will) Illinois prohibits marriages between cousins of the first degree. The husband of the testator and her mother were first cousins. Therefore the testator and her husband were within the category of second cousins or first cousins once removed and not cousins of the first degree. Since their marriage was valid it revoked the wife's will made before her marriage.

IN RE: ESTATE OF KLAPPA v. *JOHNSON*, 18 Ill. App. 2d 501, 152 N.E. 2d 754 (1st Dist.) (Disallowance of Fees of Attorney for Executor) (Leave to appeal denied) Under Section 337 of the Probate Act the Probate Court has power and jurisdiction to allow fees to the attorney for the administrator or executor. Implicit with this power is the authority of the Probate Court also to disallow fees to the attorney for an administrator or executor when his services have not been beneficial to the estate and instead have been injurious to the estate.

Where the administrator with the will annexed after notice by mail to the attorney for the displaced executor procures the entry of an order by the Probate Court disallowing fees to the attorney, and the latter appeals to the Superior Court (similar to Circuit Court) and includes in the transcript on appeal matters on the merits unrelated to the jurisdictional question, the attorney thereby voluntarily submitted jurisdiction of his person to the Probate and Superior Courts. The Superior Court on appeal also disallowed fees to the attorney.

IN RE: ESTATE OF LAWSON, 18 Ill. App. 2nd 586, 153 N.E. 2d 87 (3rd Dist.) (Petition to Revoke Letters of Administration) Decedent's right to protection under an auto casualty insurance policy when the insurance company designated the Secretary of State of Illinois as its process agent rendered the policy an asset of the decedent's estate with the situs in Sangamon County, Illinois where the decedent, a resident of Ohio, was killed in an automobile collision.

The decedent had no tangible assets or heirs residing in Illinois. The public administrator of Sangamon County, Illinois, on his petition was appointed administrator of the decedent's estate. The administrator was named as defendant in two suits filed in the Circuit Court of Sangamon County for damages arising out of the accident in which the decedent met her death. Her estate in Ohio, her domicile, had been completely administered there.

A "creditor" under the Probate Act of Illinois includes tort claimants. The tort plaintiffs were entitled to proceed in their suits. The collision in Sangamon County was a "transaction" that occurred there and the venue in Sangamon County was proper.

ADAMS v. *ALBERS*, 19 Ill. App. 2d 109, 153 N.E. 2d 279 (1st Dist.) (Will Construction) Arrearages on an annuity are paid out of subsequent surplus accumulations of income unless a contrary intention of the testator is clearly shown.

ALLEN v. *NAT. BANK OF AUSTIN*, 19 Ill. App. 2d 149, 153 N.E. 2d 260 (1st Dist.) (Will Construction) (Leave to appeal denied) A bequest of a specific number of shares of corporate stock owned by a testator when he makes his will also includes additional shares of the stock acquired subsequently by the testator by stock splits unless a contrary intention appears in the will. It is immaterial whether these bequests are considered as general or specific legacies.

IN RE: ESTATE OF HINSHAW, 19 Ill. App. 2d 239, 153 N.E. 2d 422 (2nd Dist.) (Petition to Revoke Letters of Administration) An Iowa insurance company issued its automobile public liability policy to an Iowa resident who collided with another car in Kane County, Illinois. The Iowa automobile company was not authorized to do business in Illinois nor did it do any business in Illinois. It had not authorized the Secretary of State of Illinois to accept service of process for it in any suit filed against it in Illinois. (See Lawson v. Lawson, 18 Ill. App. 2d 586, 153 N.E. 2d 87).

The policy had no situs in Illinois and was not property located in Illinois that authorized the appointment of an administrator in Kane County, Illinois for the estate of the Iowa resident who died after the collision.

An heir of the Iowa decedent, because of her possible liability for the decedent's debts under the statute of frauds, had the right to appeal to the Circuit Court of Kane County, Illinois from an order of the Probate Court of Kane County, Illinois that denied her petition to revoke the letters of administration issued by that Court in the estate of the Iowa decedent, as she was a person who considered herself aggrieved under Section 330 of the Probate Act.

KRIEGEL v. *MIEDEMA*, 20 Ill. App. 2d 235, 155 N.E. 2d 815 (1st Dist.) (Action to Establish a Constructive Trust, for an Accounting, etc.) Laches and limitations bar an action when the principals have died and the action is brought five years after their deaths, and sixteen years after the transaction occurred and the delay is not explained.

As a general rule equity will follow the law in applying the statute of limitations period to bar an action.

As a matter of law a fiduciary relationship does not exist between a parent and a child.

Courts take judicial notice that during the second World War period real estate values rose tremendously so that this increase in values overcomes a charge that the consideration for a sale of real estate was wholly inadequate.

A court of chancery has jurisdiction to distribute an intestate estate to the rightful heirs when all debts of the deceased and his funeral expenses have been paid and the only question involved is to make a determination of the heirs and their interests.

MURPHY v. *NORTHERN TRUST CO.*, 20 Ill. App. 2d 244, 155 N.E. 2d 821 (1st Dist.) (Will Construction) (Leave to appeal denied) The Illinois Thellusson Act (Ch. 30 S153, Ill. Rev. Stats. 1951) limits only the period of income accumulations, being twenty-one years after the death of the testator. The Act does not defeat the testator's intention as to who would be entitled to property under the will. The produce beyond the statutory limit goes to the person or persons who would have been entitled to it if the accumulation of income had not been directed.

IN RE: ESTATE OF YOON, 20 Ill. App. 2d 343, 156 N.E. 2d 217 (1st Dist.) (Objections to Final Account) An attorney who renders services that are beneficial to the administration of a decedent's estate is entitled to the allowance of reasonable compensation to be paid directly from the estate assets pursuant to Section 337 of the Probate Act if he has no knowledge of the misconduct of his client, the administrator, whose letters were revoked because they were obtained by false pretenses. Moreover, under Section 287 of the Probate Act, all acts by the administrator according to law prior to the revocation of letters were valid.

IN RE STATE OF ANDERSON, 20 Ill. App. 2d 305, 155 N.E. 2d 839 (1st Dist. Abst.) (Petition to Set Aside Minor Settlement) (Leave to appeal denied) Twelve years after the Probate Court of Cook County, Illinois, approved a guardian's settlement of his minor ward's claim against a railroad for personal injuries, and while the minor's estate was still pending, that court had jurisdiction to vacate the order approving the settlement because of the fraud perpetrated on the court by the railroad respondent. The ward was still a minor when the settlement was set aside. This fraud consisted of the surreptitious payment by the railroad respondent of a sum of the money to the guardian, the father of the ward, and also the employment by the railroad of its own attorney to represent the guardian in the settlement in order to by-pass the actual attorneys for the ward and his guardian.

At the time of the appointment of the guardian and the settlement, both the guardian and ward were residents of Cook County. At the time the settlement was set aside, the ward resided in DuPage County. Since the ward's estate originally was properly opened in the Probate Court of Cook County and was still pending in that court, it had continuing jurisdiction of the minor's estate and had the power to appoint the public guardian of Cook County, a resident of that county, as *successor* guardian. The latter had the power to cause the settlement to be vacated.

IN RE: ESTATE OF DESKOVIC, 21 Ill. App. 2d 209, 157 N.E. 2d 769. (1st Dist.) (Recovery Citation) In a joint bank account with survivorship created by a decedent in his lifetime with his nephew and the latter's wife, they, as survivors, became the owners of the funds upon the death of the uncle. The usual language in the bank signature cards of the right of the bank to make payment to any of the parties whether or not the other parties are living, coupled with the uncontradicted oral testimony of the intent of the decedent that he wanted his nephew and the latter's wife to have the funds, established the latter's right to the funds as survivors. The written agreement with the bank itself established a prima facie case for the survivors.

IN RE: ESTATE OF FRANK F. KAPRAUN, 21 Ill. App. 2d 231, 157 N.E. 2d 700 (2nd Dist.) (Objections to Final Account) A testator gave the residue of his estate to his five children. The attorney who represented one of the sons as executor in the administration of the probate estate also was the attorney for this same son individually and as executor in defending a suit by the other four children of the testator to establish a constructive trust in certain real estate previously sold by the testator to this son. A decree was entered denying any relief in the constructive trust suit.

The Appellate Court held that the attorney did not represent conflicting interests and that he was entitled to his fees in the probate estate as attorney for the executor.

The Appellate Court held that the pendency of the constructive trust action was good cause for delaying the closing of the estate and refused to surcharge the executor with the statutory penalty of 10% of the estate personalty under Section 308 of the Probate Act. This statute should be strictly construed to prevent the imposition of the penalty.

JOSEPH R. FRIEDMAN

Member Joseph R. Friedman, formerly president for six terms of Congregation Agudath Achim of South Shore, was elected president of the Council of Traditional Synagogues of Greater Chicago. This organization consists of some thirty traditional Jewish synagogues in the Chicagoland area.

ZLATNIK REELECTED

Member, State Representative, Eighth district, Michael F. Zlatnik was reelected for the fourteenth consecutive time president of the Northwest Home of the Aged, 2201 Sacramento Boulevard.

The Home has thirteen auxiliaries and a membership of more than ten thousand.

ABRAHAM FELDMAN

Member Abraham Feldman was reelected for the fifteenth consecutive time president of The Chicago District Waterways Association.

Feldman is president of Lake-River Terminals, Inc., 5005 So. Harlem Ave., Berwyn, Illinois.

POWER WITHOUT PROPERTY

By PAUL G. ANNES

PAUL G. ANNES

A generation ago Adolph A. Berle, Jr. wrote, in collaboration with G. C. Means, *The Modern Corporation and Private Property.** This brought to general attention the striking facts about the great concentration of wealth and power in the large corporations of the United States. A practicing lawyer, a professor both in the Law and Political Science Faculty of Harvard University, and a holder of high public office, Berle has ranged over the field of corporation law, political and economic science and related disciplines, both in the classroom and the active world. And now in the full maturity of his knowledge and experience, he has added to his writings by bringing out a very significant book. Although his raw material is still the American corporate enterprise, the subject matter is in reality the totality of our national community. Many may disagree with some of the author's opinions, perhaps even with his major conclusions; but no one can dismiss them. Berle has written a thought-provoking and very important work.

The size of the large corporations in our country has grown amazingly ever since World War I, and particularly since World War II, so that by now some 500-600 companies account for about two thirds of our industry. This is an astounding and far-reaching phenomenon and is the primary fact for all that follows in the author's presentation. And basic to that presentation is yet another fact—the answer to the inquiry about the sources of the huge additions to the capital of these growing corporate giants. The answer, which has been well known all along, is that the great corporations do not have to go to the general public for their new capital. Most of it, about three-fifths, comes out of their own undistributed earnings (and depreciation reserves); and almost all the rest from banks, insurance companies, pension trusts and mutual funds—in that order. Only about five percent of additions to corporate resources come from direct investments by individuals. These companies are therefore not directly dependent upon the general public for their capital growth. At the same time the nature of the corporate system, as it has developed, is such that *the stockholders* (they number about 6 or 7 million) have no real say-so in their operations. The overwhelming majority simply sign the proxies sent them by management; most of the others don't bother to do anything. The size of these large corporate organizations has become so immense that even the former "working control" groups have all but disappeared, and proxy fights are very rare indeed. For all practical purposes the American corporate structure which we are considering, involving as it does the larger part of our economy, is run by a relatively small number of corporate managers, a non-Statist civil service elite, very well paid, but not, in the main, the wealthiest in our land.

Only one group, thinks Berle, is emerging with the possibility of challenging these corporate managers; but they, too, are in turn the *managers* of the growing pension (and profit-sharing) funds of our country. In his opinion, "We must forecast a time when these funds . . . will emerge as a major and perhaps decisive element in choosing the managers and influencing the policy of the more decisive sectors of American production." The author himself recognizes that at present managers of pension funds do not interfere with corporate management and that they may continue to behave in that way.

Regrettably, current comment on Berle's latest opus is disproportionately interested in this last problem which, in this writer's judgment, has very little, if any, bearing on the principal concerns of his effort. Indeed, the author drops this part of his presentation as a factor in the most vital part of his work, which we are about to consider—and with good reason, for the managers of these funds are very few in number and at most would constitute an extraneous addition to corporate management: most of them, directly or indirectly, are even now a part of it. In any case, there would still be no direct connection between the beneficiaries of these funds and the election of corporate management. The present reality and the predictable future of "People's Capitalism" in America is that of a huge and efficient system, administered essentially by a self-perpetuating oligarchy of corporate managers who beneficially own but an infinitesimal part of these companies, wielding great "power without property"—two to five companies dominating each of most industries. Little remains except nostalgia and verbal hangover of the former meaning of "individual initiative" and "private property" in present-day America; its economic system has become, in a very real sense, "collectivist" and "planned."

Berle's main concern is with the nature of economic power as applied to our great corporations. He presents his views with considerable documentation, remarkable insight and clarity, and with a pervading sense of optimism. It is fine writing and good reading. Lack of space makes impractical a general summary here, except of the part which considers the limitations and control of this power. Far-reaching as it is, it is not absolute. It is limited in part by competition among the giant companies themselves in the various industries (though it is no longer the competition of former times, of classical "market place conditions") and by the need for profits. Beyond that, this unprecedented power is also subject to the intangible but real power of

* *Power Without Property.* Harcourt, Brace & Co. 184 pp. $3.75.

the public consensus; and finally, to the control and intervention of government. The role of the public consensus and of government appropriately receive most attention; for here is the basic difference between us and the communist world. With us the economic power is not coupled with the power of the State; this is the crucial difference. So long as the two remain separate and separated, there exist the means of effective restraint on the excesses of the former. And our government does indeed regulate and control many major economic activities: public utility and transportation rates, interstate commerce, credit and interest rates, security exchanges, labor and management relations—to mention only a few. It must be remembered, too, that the State engages directly in a good many economic enterprises —such as, for example, the Tennessee Valley Authority. Besides that, there is the very considerable purchasing power of goods and services built into our huge governmental budgets. Add all this to the vast economic power of our corporate system and one gets an idea of the terrifying condition which would obtain were all this awesome aggregate of power in one group of people, by whatever name.

It may be pardonable to ask for a little more even when much has been given. A study of power, such as Berle has made, should include the role of labor unions, particularly of the great industry-wide unions. The recent steel strike is a harsh reminder. Certainly unions are a potent counterforce to the corporate managers and like them, in turn, subject to many of the same controls. Nor can such an inquiry overlook the fact that each of these groups has a strong and distinctly different bias in respect of many important questions upon which government must act. This suggests thinking about how to make our political parties financially independent of both "big business" and "big unions," as of all "big money." To that end, perhaps we should allow political contributions of individuals to be credited against their income *taxes*, say to the extent of three-fourths of the contribution, up to perhaps ten to twenty dollars a year; the contributor would thus pay at least a little of his own money to the party of his choice. The response of only a small fraction of the sixty million taxpayers would accomplish the desired result in this simple way.—Also, existing status prohibiting large contributions require considerable revision to make them more effective.

Yet another comment: one-third of our industry and all of agriculture are completely outside the power complex of the giant corporations. This is a very significant factor in our system of checks and balances and separation of powers, in the economic as in the political life of the nation. They, too, serve the general imperative to keep separate, however imperfectly, the economic and governmental power in our country.

That way lies confidence that all will act in the general interest, sensitive to the public consensus—as the author puts it—to

> the value judgments so widely accepted and deeply held in the United States that public opinion can energize political action when needed to prevent power from violating those values.

The men and women who influence this consensus come from all walks of life: leaders in business, labor and politics; journalists and university professors; and all who hold high rank in their own person, no matter what their calling. Thus we may continue to enjoy our material abundance and our freedoms, hopefully wisely enough to face the anxieties and solve the problems of our time.

BOOK REVIEWS

TEAPOT DOME. By M. R. Werner and John Starr. The Viking Press. 306 pp. Index. $5.00.

By Mark J. Satter

Member Mark J. Satter is a frequent contributor to legal periodicals, and a lecturer on legal lore and subjects of communal interest.

Werner and Starr, free-lance writers, here tell the story which made the words *Teapot Dome* synonymous with betrayal and bribery in high places. In their telling, it is a swiftly unraveling detective mystery narrative.

Albert Fall's sudden display of wealth and payment of his back taxes as well as financing new improvements on his home, occur concurrently with the leasing by the Secretary of the Interior of the naval oil reserves at Teapot Dome, Wyoming, to Harry F. Sinclair, and, the like leasing of Navy crude oil reserves to Edward L. Doheny. Payments to Fall totalled one hundred thousand dollars in cash and some two hundred thirty-five thousand dollars in Liberty bonds. Along with this is the story of how the four great oil promoters of the day met in a New York hotel room, and negotiated an oil sale by which they defrauded their own directors and stockholders out of millions of dollars. The scheme was thus accomplished: sale was made at $1.50 per barrel to Continental Trading Company of Canada, and resale by Continental to the major oil companies at $1.75 per barrel. The total sales were in excess of fifty million dollars; the stockholders of the Canadian corporation, were the same officers of the purchasing oil companies. The profits were converted to 3½% United States bonds, and distributed among the officers from time to time. These same bonds, in amounts of nearly a quarter million dollars, found their way to Harry Sinclair and thence to Albert Fall, and even to the Republican National Committee.

The book recites succinctly the government's quest for punishment and the eventual recovery of squandered money and assets. Action took place on the floor of the Senate during the Harding administration, and continued to the conclusion of the trials of the principals and the recovery of millions during the administration of Herbert Hoover. Men long prominent in the legal profession participated in the drama. Owen Roberts, later to be appointed Justice of the Supreme Court by President Hoover, Thomas Walsh, the crusading Senator and others fought for the people against corruption and special privilege.

Sinclair and Doheny were acquitted, though Sinclair served some months in prison for contempt of court arising out of jury tampering. Fall was found guilty and served his sentence. All the leases negotiated by Fall were ordered cancelled by the United States courts, and large sums of money were returned to the government. Senate investigations eventually uprooted all the vicious practices of the chief culprits and their associates. The hearings, trials, hunt for evidence, fruitless search for well hidden witnesses, fantastic detective work by Treasury men all led toward a classic tale of crime and punishment.

But there is another, and far more disquieting story, only hinted at by the writers, although we may be sure the authors well knew of its existence. That is the story of brazen corruption and misconduct in high places and the running thread of the entire incident that not one of the principals at any time by word or act, during his lifetime, showed any remorse for his misconduct. Moreover, none of the principals, save Fall, suffered much economically for their misconduct. Following their experience, either at Senate hearings or at the trial, Sinclair and Doheny were usually greeted fervently by good sized mobs of well-wishers.

The Republican administration won the succeeding two national elections, and lost high office only when depression and economic panic occasioned by their policies plagued the nation. Revelation of betrayal in national office did not in any way it seems, resulted in a general feeling of revulsion against the party wherefrom stemmed the betrayers.

Another aspect, while not entirely surprising, deserves some comment. The defendants spent millions of dollars for the best legal talents of the day. On its side the government labored hard and diligently. Owen Roberts was given no appropriation for his salary nor was his associate, former Senator Atlee Pomerene. The legal talent on the side of defense, however, occupied forty rooms in a hotel adjacent to the courthouse. The fees paid attorney Frank Hogan for one trial ran in excess of one million dollars.

Lawyers today would marvel at defense tactics permitted in a Federal District Court. Both Sinclair and Doheny argued before the jury that the real reason for their bribery was a desire to serve the United States by placing oil in strategic storage spots. Attorney Hogan argued to the jury that Sinclair, Fall, and Doheny were more to be trusted with the security of the United States than were the Congress and the President. More astounding than this argument was the attitude of the two successive trial judges who permitted such arguments to reach the jury.

Important and high placed witnesses turned up from limbo at their mahogany desks within days after the trial at which they were needed was over with an air of wonderment as to why they were not called, even though the entire country rang with search warrants for them. Other millionaires moved to permanent and impenetrable anonymity in European cities, only to reappear later, with curious question of "Was I wanted?"

Without editorial comment of any kind, the writers detail the part played by lawyers throughout the sordid pattern of betrayal and corruption. *Teapot Dome* lends substance to the charge that lawyers will frequently do much for principle, but more for money. As Justice Brandeis had said, "The lawyers of the day gave more than service to the purchasers of their talents."

This is a volume worth reading.

TEARS AND LAUGHTER IN AN ISRAEL COURTROOM, by Shneor Z. Chesin. The Jewish Publication Society of America. 374 pp. $4.00.

Reviewed by PAUL H. VISHNY

The Jews are a people with a long, unbroken memory of human comedy and tragedy as reflected in the decisions of law courts. For two thousand years and more, Jews have lived (at least as far as their own society was concerned) under the majesty of an ordered, reasoned system of law. The many thousands of volumes which report Jewish legal decisions and codes are the best basis for picturing the everyday life of the Jews throughout the ages. What a pity that these treasures are closed to the eyes of the contemporary Jew, particularly the lawyer! This book focuses upon a small portion of the law as administered primarily by or for Jews—the experiences in Israeli courtrooms. The law, indeed, is very often not "Jewish" but rather a development based upon British law and local needs. But the people are the same.

The author, Assistant Chief Justice of the Supreme Court of Israel, writes of the human problems in the Israeli courtroom. He writes first of the many "personalities" one finds—the spectator and the participant. He then writes of the humor in the courtroom and of the tragedy. Justice Chesin also includes somewhat laborious digressions which describe technical legal problems. Happily, these digressions are few.

There is a startling universality about the tragedies which the author describes—the juvenile delinquent, product of the broken home, or abject poverty, or the attempted suicide. Judaism, as the author adequately demonstrates, stamps the law relating to suicides with its built-in tendency for sympathy and mercy.

It is in the descriptions of the courtroom characters and courtroom humor, however, that one senses more the warmth of a particular culture. There is *Moshe-Chaim*, a regular courtroom visitor, who immerses himself in the proceedings as if he were part of the contest. Next is the witness who, in conformity with traditional Jewish practice, will go to great lengths to avoid taking an oath. Here, too, are the peculiar troubles of the *Shadchan*, the match-maker, who brings together two souls in search of marriage, but then is compelled to sue for his fee. Each of these personalities and the many others described in this book would have provided a *Sholom Aleichem* or a *Mendele* with material enough to delight readers for hours and hours. But Justice Chesin is no *Mendele*, and the style of the book is somewhat heavy and uninteresting.

The final section of the book, entitled "Making and Breaking Wills," is the most interesting. This is so because it accurately reflects the Jewry of the ages. The Wills which he quotes most frequently are the "ethical Wills," which were intended to carry to the decedent's heirs the great and honored traditions of a noble people. Most moving are the excerpts from the Will of one who tells of parting from his son when arrested in 1920 by the Bolsheviks. He tells of tearing himself from his son's arms, while his son called after him, "I will study (Torah) and I will go to the land of Israel!" This is a short declaration of the devotion which always sustained the people of Israel. It is all that Jews ask today for their brethren in Russia.

Lawyers will find this book of special interest, not only because it deals with law and the courts, but because it contains frequent, although short, glimpses into many aspects of Jewish law.

TRUMBULL PARK, by Frank London Brown. Henry Regnery Company. 432 pp. $3.95.

Reviewed by BENJAMIN WEINTROUB

The book depicts the experiences of Negro tenants, and, in particular, describes what happened to Louis Martin, a Negro drill-press operator, his wife Helen and their two small children upon their admission into Trumbull Park Homes, a housing project built to accommodate hundreds of families who could, on their own incomes, afford no such living quarters by renting from private owners. Trumbull Park Homes were built some seven years ago. A City Housing Authority, which operates these Homes, states in its code that "there should be no racial barriers or discrimination in a home in public housing."

This is a bitter, revolting story of man's inhumanity to man. From the day of its arrival in the new home the Martin family were subjected to cruel persecution from the white tenants and their neighbors in the surrounding dwellings. Visits with fellow-Negroes—there were five or six other such families already on the premises — had to be conducted clandestinely at night. Children, women, and men were molested whenever police were not immediately around. Their rooms were constantly broken into, windows smashed, furniture damaged, and access to grocery and other stores in the neighborhood was denied. Morning travel to places of employment was impossible unless it was done in police wagons to points outside of Trumbull Park where transfer could be made to other means of transportation without injury to life and limb. Then via the same degrading processes of protection by the police, riding in covered vehicles, the bread-winners would return to their apartments where they would be met by frightened wives and hysterical children. Throughout the night the Negro tenants had to suffer from terrifying noises of incessantly exploding aerial bombs, from rocks thrown at their windows, and from a barrage of insulting epithets and threats of more molestation to come unless they vacated their new homes and went elsewhere.

Martin mentions but one or two white men who, at the peril of their lives, showed their sympathy and solidarity with the persecuted black men. He expatiates at length, however, upon the indifference of the police to the plight of the Negroes. It is his contention that determined officers of the law could have either stopped or cut drastically the innumerable offenses against their fellow-Americans who happened to be born black. There are also intimations in his volume that the campaign to remove Negro tenants from Trumbull Park was an organized venture on the part of evil, wealthy real estate operators determined for reasons of profit to make Trumbull Park solely "a clean" white community.

This is a book that challenges the conscience of any American community. In the six or seven years since Trumbull Park Homes were erected no city-wide aroused public has been heard from in regard to offering aid to several other "Martin" families who still struggle to maintain themselves precariously in that area. True, the persecutions are less frequent and the attacks are but sporadic now, but still of the four hundred and fifty-four dwellings in Trumbull Park only nineteen units are occupied by Negro families.

Brown's book is a powerful one. At times, in spite of some profusion of incidents, dialogues, and swift action, it still reads like a social tract. It is truly a study in "black and white" and throughout is a commentary on prejudice and intolerance much, too much, in our midst.

The Constitutional Position of Property in America

. . . When it is said, as it commonly is, that the fundamental division of powers in the modern State is in legislative, executive and judicial, the student of American institutions may fairly note an exception. The fundamental division of powers in the Constitution of the United States is between voters on the one hand and property owners on the other. The forces of democracy on one side, divided between the executive and the legislature, are set over against the forces of property on the other side, with the judiciary as arbiter between them; the Constitution itself not only forbidding the legislature and executive to trench upon the rights of property, but compelling the judiciary to define and uphold those rights in a manner provided by the Constitution itself.

This theory of American politics has not often been stated. But it has been universally acted upon. . . . It has had the most fundamental and far-reaching effects upon the policy of the country. . . . The voter was omnipotent—within a limited area. He could make what laws he pleased, as long as those laws did not trench upon property right. He could elect what officers he pleased, as long as those officers did not try to do certain duties confided by the Constitution to the property holders. . . .

Arthur Twining Hadley
from, The Supreme Court from Taft to Warren

SORROW

The Decalogue Society of Lawyers announces with deep regret the deaths of the following members:

Louis L. Cohen Erwin E. Cowen
Edward E. Contarsy
Irwin R. Furlett Ira Jacobs

CONGRATULATIONS

Member Max A. Reinstein was reelected Chancellor of TAW Epsilon national legal fraternity, Chicago graduate chapter.

Reinstein is a former president of the Research Society for Cerebral Palsy.

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A Publication of The Decalogue Society of Lawyers

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Decalogue Essay Contest Completed
Winners Named

Past President Solomon Jesmer announced the completion of The Decalogue Essay contest initiated by him during his incumbency in office. The subject of the contest was "The Constitution and Religion in Public Schools." Participation in the contest was solicited from lawyers and from law students. Three prizes for winning essays were offered in each division, as follows: In the Lawyer's division as first prize, $500.00, second $200.00, third $100.00.

In the Law student division, the first prize earned $300.00, second $200.00, and third $100.00.

Judges of the contest were, for lawyers: Judges Julius H. Miner, Walter V. Schaefer, and Ulysses S. Schwartz.

Judges of the contest for law students were, Judges Julius J. Hoffman, Abraham L. Marovitz, and John V. McCormick.

THE WINNERS

Lawyer's division, First prize, Paul H. Vishny, Chicago, Second prize, Mary V. Neff, Chicago, Third prize, Alfred W. Israelstam, Chicago.

Law student division: First prize, Walter Olenich, Seaton Hall University, Second prize, Fred Steingold, Michigan Law School, Third prize, Morris Marget Goldings, Harvard University Law School.

The committee in charge of the Essay Contest which raised the needed funds for prizes and conducted the contest consisted of the following members of our Society: Joseph S. Grant, chairman, Solomon Jesmer, Benjamin Weintroub, David F. Silverzweig, Elmer Gertz, Henry W. Kenoe, and Marshall Patner.

Meyer Weinberg, President, announced that distribution of prizes will be held with appropriate ceremonies at a luncheon at the Covenant Club on Law Day, April 29th.

The first prize winning essay, in the Lawyer's division by member Paul H. Vishny, will be published in the June issue of The Decalogue Journal; other essays in subsequent numbers of our Journal.